IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 6, 2007 Session

STATE OF TENNESSEE, ex rel., o/b/o C.V. v. MARK VISSER, ET AL.

A Direct Appeal from the Juvenile Court for Sumner County
No. 77-168, 78-64 The Honorable James McCord Hunter, Judge

No. M2006-01229-COA-R3-JV - Filed on May 18, 2007

Adoptive parents of minor child executed a voluntary surrender of their parental rights and, thereafter, sought termination of their child support obligations. The trial court granted the relief sought. The State of Tennessee, on behalf of the minor child, appeals on the ground that T.C.A. § 36-1-111(r)(1)(A) requires a parent who executes a voluntary surrender of parental rights to continue paying child support until the child is adopted. We reverse and remand.

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Juvenile Court Reversed and Remanded

W. FRANK CRAWFORD, P.J., W.S., delivered the opinion of the court, in which ALAN E. HIGHERS, J. and DAVID R. FARMER, J., joined.

Paul G. Summers, Attorney General and Reporter; Juan G. Villaseñor, Assistant Attorney General for Appellant, State of Tennessee ex rel. o/b/o CV, a minor child

John R. Phillips, Jr., of Gallatin, Tennessee for Appellees, Mark and Loretta Visser

OPINION

The material facts in this case are undisputed. In May of 1998, Mark Visser and his wife, Loretta (together, the "Vissers," or "Appellees") became foster parents to C.V. (d.o.b. 11/11/90) and his sister, A.V. On March 1, 1999, the Vissers adopted C.V. and A.V. For several years, C.V. thrived in the Vissers' home. However, when C.V. entered eighth grade, he began to have behavioral problems at home and at school. Specifically, C.V. was constantly disruptive at school; he ran away from home on at least one occasion; he falsely accused Mr. Visser of having sexual relations with A.V.; he threatened to burn the family home and to physically harm both of his parents. In response to these behavioral problems, the Vissers sought professional, family counseling. However, these attempts to remedy the situation only made matters worse.

In the summer of 2005, the State of Tennessee Department of Children's Services ("DCS") took temporary custody of C.V. On June 28, 2005, the State of Tennessee *ex rel.* o.b.o C.V. (the "State," or "Appellant") filed a petition to set support for C.V. By "Agreed Order" of September 22, 2005, Mr. Visser was ordered, *inter alia*, to pay $518.00 per month in child support.

While in DCS custody, C.V. continued to insist that he would not return to the Vissers' home. Because C.V. had threatened to harm his parents, DCS realized that reunification–DCS's normal policy in these types of situations–would not be possible. Consequently, on November 3, 2005, the Vissers and DCS executed a voluntary surrender of the Vissers' parental rights to C.V.[1] The trial court approved the voluntary surrender on November 13, 2005. As of the date of the trial in this case, C.V. had not been adopted.

On November 4, 2005, Mr. Visser filed a "Motion to Terminate Child Support Obligation and for Refund of Overpayment." By his Petition, Mr. Visser sought termination of his child support obligation as of the date of the entry of the surrender order. Because he had paid his child support for November at the end of October, Mr. Visser also sought a refund of the support paid after November 3, 2005. On November 7, 2005, the State filed its memorandum in opposition to Mr. Visser's Petition. A supplemental memorandum was filed on December 29, 2005. The State specifically argued that:

> Under T.C.A. § 36-1-111(r)(1)(A) the mere acceptance by a court of a surrender of a parent's parental rights does not terminate parental rights or obligations by a parent to a child. The language of the statute states that the surrender shall terminate the responsibilities of the surrendering parent **"...if the child is ultimately adopted..."** To date no order of adoption has been provided to the Department of Human Service or its Title IV-D contractor. Absent [] such proof of adoption it is inappropriate to terminate child support at this time.

(Emphasis in original).

The State further asserted that the juvenile court lacked jurisdiction to order a refund and that such order would violate the principle of sovereign immunity.

On March 9, 2006, the Juvenile Court of Sumner County held a hearing on Mr. Visser's Petition.[2] On March 16, 2006, the trial court entered its Order granting Mr. Visser's Petition. The

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[1] Although the voluntary surrender contained in the record was only executed by Ms. Visser, Mr. Visser also executed an identical voluntary surrender of his parental rights to C.V. The State stipulated to this fact.

[2] During the pendency of this case, the State also petitioned the trial court to set child support payments for Ms. Visser. The trial court heard this petition at the March 9, 2006 hearing. Based upon the trial court's finding that the Vissers did not owe child support from the date of their surrender of parental rights, ***see*** *infra*, the trial court declined (continued...)

Order specifically terminates Mr. Visser's support obligation as of November 4, 2005 and orders the State to refund "all child support paid by Mark Visser for the period of November 4, 2005 to the present." The child support proceedings filed by the State against Ms. Visser, ***see*** fn. 2, were consolidated with the proceedings involving Mr. Visser by Order of March 9, 2006.

On March 23, 2006, the State filed a motion to alter or amend the March 16, 2006 Order. The motion to alter or amend was denied by the trial court's Order of June 13, 2006. The State appeals and raises two issues for review as stated in its brief:

> I. Whether the Juvenile Court erroneously terminated the Vissers' child support obligation after they voluntarily surrendered their parental rights to C.V.
>
> II. Whether the Juvenile Court's order directing that DHS reimburse child support paid by the Vissers constitutes an unlawful retroactive modification of child support and violates sovereign immunity.

Because this case was tried by the court sitting without a jury, we review the case *de novo* upon the record with a presumption of correctness of the findings of fact by the trial court. Unless the evidence preponderates against the findings, we must affirm absent error of law. ***See*** Tenn. R. App. P. 13(d). As note above, the material facts in this case are undisputed. The issues raised herein involve statutory interpretation and, as such, are questions of law. Consequently, our review of the trial court's order is *de novo* upon the record with no presumption of correctness accompanying the trial court's conclusions of law. ***See*** Tenn. R.App. P. 13(d); ***Waldron v. Delfss***, 988 S.W.2d 182, 184 (Tenn.Ct.App.1998); ***Sims v. Stewart***, 973 S.W.2d 597, 599-600 (Tenn.Ct.App.1998).

Until 2000, the statute at issue in this case, T.C.A. § 36-1-111(r)(1)(A)(Supp. 1995), read as follows:

> A surrender, a confirmed parental consent, or a waiver of interest executed in accordance with this part shall have the effect of terminating all rights as the parent or guardian to the child who is surrendered, for whom parental consent to adopt is given, or for whom a waiver of interest is executed. It shall terminate the responsibilities of the surrendering parent or guardian, the consenting parent, or the person executing a waiver of interest under this section for future child support or other future financial responsibilities ***even if the child is not ultimately adopted***; provided, that this shall not be construed to eliminate the responsibility of such parent or guardian for past child support arrearages or other financial obligations

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[2](...continued)
to set a payment schedule for Ms. Visser.

> incurred for the care of such child prior to the execution of the surrender, parental consent or waiver of interest; and provided further, that the court may, with the consent of the parent or guardian, restore such rights and responsibilities pursuant to § 36-1- 118(d).

(Emphasis added).

The statute was amended in 2000 as follows:

> Tennessee Code Annotated, Section 36-1-111® is amended by deleting the language "even if the child is not ultimately adopted" in the last sentence of subdivision (1)(A) and by substituting instead the language "pursuant to subsection (w) if the child is ultimately adopted."

2000 Tenn. Pub. Acts, ch. 922, sec. 3.

Currently, and as applicable to this case, T.C.A.§ 36-1-111(r)(1)(A) (2005) reads:

> A surrender, a confirmed parental consent, or a waiver of interest executed in accordance with this part shall have the effect of terminating all rights as the parent or guardian to the child who is surrendered, for whom parental consent to adopt is given, or for whom a waiver of interest is executed. It shall terminate the responsibilities of the surrendering parent or guardian, the consenting parent, or the person executing a waiver of interest under this section for future child support or other future financial responsibilities pursuant to subsection (w) ***if the child is ultimately adopted***; provided, that this shall not be construed to eliminate the responsibility of such parent or guardian for past child support arrearages or other financial obligations incurred for the care of such child prior to the execution of the surrender, parental consent or waiver of interest; and provided further, that the court may, with the consent of the parent or guardian, restore such rights and responsibilities pursuant to § 36-1- 118(d).

(Emphasis added).

In construing statutes, the Court's role is to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope. ***Sallee v. Barrett***, 171 S.W.3d 822 (Tenn.2005); ***McGee v. Best***, 106 S.W .3d 48 (Tenn.Ct.App.2002). In ***McGee***, the Court said:

> The rule of statutory construction to which all others must yield is that the intention of the legislature must prevail. ***Mangrum v. Owens***, 917 S.W.2d 244, 246 (Tenn.Ct.App.1995)(citing ***Plough, Inc. v. Premier Pneumatics, Inc.***, 660 S.W.2d 495, 498 (Tenn.Ct.App.1983); ***City of Humboldt v. Morris***, 579 S.W.2d 860, 863 (Tenn.Ct.App.1978)). "[L]egislative intent or purpose is to be ascertained primarily from the natural and ordinary meaning of the language used, when read in the context of the entire statute, without any forced or subtle construction to limit or extend the import of the language." ***Id***. (citing ***Worrall v. Kroger Co.***, 545 S.W.2d 736, 738 (Tenn.1977)). The Court has a duty to construe a statute so that no part will be inoperative, superfluous, void or insignificant. The Court must give effect to every word, phrase, clause, and sentence of the Act in order to achieve the Legislature's intent, and it must construe a statute so that no section will destroy another. ***Id***. (citing ***City of Caryville v. Campbell County***, 660 S.W.2d 510, 512 (Tenn.Ct.App.1983); ***Tidwell v. Collins***, 522 S.W.2d 674, 676 (Tenn.1975).

Id. at 64.

In reaching its decision to relieve the Vissers of their support obligations for C.V., the trial court concluded that the Vissers had executed an involuntary surrender of C.V., to wit:

> I [the trial court] know what the statute [T.C.A. § 36-1-111(r)(1)(A)] says. I see it. Although, I think there's some confusion in why they [the Legislature] changed that language [by the 2000 amendment]. But if you look at the true intent, not only what the Vissers meant to do, but the intent of what the State was trying to do, it really had nothing to do with another adoption taking place, it had to do with terminating parental rights because it was a dangerous situation.
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> Now, I understand that section 113 is an involuntary surrender. And I really believe that this was an involuntary surrender. The Vissers did not want to give up this child. I don't think they had a choice.
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> And I don't think we're supposed to be slaves to this statute.... I believe the true intent and I find that the true intent was–was to do an involuntary termination of parental rights, and that's what the Vissers had in mind.... And I find under that section [T.C.A. § 36-1-113] that there's no child support due to the State.

Having ruled that the Vissers executed an involuntary surrender, the trial court applied the language of T.C.A. § 36-1-113(l)(1), which reads, in pertinent part, as follows:

> An order terminating parental rights...shall terminate the responsibilities of that parent or guardian under this section for future child support or other future financial responsibilities even if the child is not ultimately adopted....

From the record before us, we disagree with the trial court's conclusion that the Vissers executed an involuntary surrender such as to bring this case under the authority of T.C.A. § 36-1-113(l)(1). While this Court appreciates the difficult circumstances under which the Vissers entered into their agreement with the State, that agreement, on its face, is a ***voluntary*** surrender of parental rights. Consequently, the applicable statute is T.C.A. §36-1-111(r)(1)(A). As set out above, the Legislature intentionally removed the "even if the child is not ultimately adopted" language from this statute and amended the language to read "if the child is ultimately adopted." We find that the intent of the Legislature is clear–the execution of a voluntary surrender does not relieve the parent from his or her support obligation unless and until the child is adopted. Not only is this conclusion supported by the plain language of the applicable statute, but it is also on par with the majority of other jurisdictions and with public policy–a point addressed by this Court in ***C.J.H. v. A.K.G.***, No.M2001-01234-COA-R3-JV, 2002 WL 1827660 (Tenn. Ct. App. Aug. 9, 2002), to wit:

> Courts in other states have viewed attempts to voluntarily surrender parental rights and joint attempts to terminate rights in the same way they have viewed agreements to eliminate child support. When so viewed, courts have found that parents cannot use the termination procedure or statutes to avoid their obligation of child support because it would be against public policy. In ***In re Bruce R***., 234 Conn. 194, 662 A.2d 107, 211-12 (Conn.1995), the Supreme Court of Connecticut, after a thorough review, concluded that "courts of our sister states universally have held that parents may not voluntarily terminate their parental rights simply to avoid their responsibility to support their children." ***Id.*** at 116 (citing cases from a number of other states). In considering the practical result of allowing a voluntary termination of rights to eliminate the duty to support, one court stated:
>
> > Clearly, if [parent] is successful in this case, he will have created a simple vehicle for the avoidance of support obligation by a parent in [Pennsylvania]. We cannot find that the Legislature intended to create such a vehicle in its passage of the Adoption Act. We have consistently held that a child's entitlement to support is a right that arises from the parent-child

> status; it is not a property right, and cannot be "bargained away" by contract. It is clear that the Adoption Act was not designed to permit a parent to avoid a support obligation by the mere filing of a petition to terminate parental rights, any more than a parent is permitted to "bargain away" the obligation by any other means.

Commonwealth ex rel. Hager v. Woolf, 276 Pa.Super. 433, 419 A.2d 535, 538 (Pa.Super.Ct.1980) (citations omitted).

* * *

The Alabama Supreme Court has addressed the issue of "whether a parent's child support obligations may be waived by a joint petition for termination of parental rights," in a case where the mother sought termination of her ex-husband's parental rights in order to avoid future disagreements or a custody conflict and testified the father had shown little interest in his son. The father testified he disagreed with his former wife over child-rearing, but that he had no interest in visiting his son and agreed the child's best interests would be served by a termination of his parental rights. The child's guardian ad litem opposed termination as contrary to public policy and contrary to legislative intent when no adoption is contemplated. In deciding the issue based on the best interest of the child test, the court held:

* * *

> Even if [the father] chooses not to establish contact with his son, the son's right to receive support from his father remains. The Child Protection Act of 1984, as we have noted, was not intended as a means for allowing a parent to abandon his child and thereby to avoid his obligation to support the child through termination of parental rights. The courts of this state will not be used in the furtherance of such a purpose.

Ex parte ***Brooks***, 513 So.2d 614, 617 (Ala.1987), overruled on other grounds by Ex parte ***Beasley***, 564 So.2d 950 (Ala.1990). Consequently, the court determined the child's best interests, particularly his right to support, would not be protected by termination of the father's parental rights.

Similarly, the Utah Court of Appeals has held that an adoptive father could not voluntarily terminate his parental rights because it was not in the best interests of the child.

> Courts in other states have held that parents may not voluntarily terminate their parental rights simply to avoid their responsibility to support their children. "Surely the legislature did not intend that [the statute] be used as a means for a parent to avoid the obligation to support his or her children." Unlike an adoption case where a parent waives his or her parental rights to a child in order that another may assume those rights and obligations, this is a case where allowing the adoptive father to voluntarily terminate his right and obligations would leave R.N.J with only one legal parent.

In re R.N.J., 908 P.2d 345, 351-52 (Utah Ct.App.1995) (citations and footnotes omitted) (citing cases from other states in n. 2).

> We find persuasive these holdings and the reasoning that supports them. They reflect principles underlying Tennessee's public policy and its law on termination of parental rights. Whether the basis for the decision lies in the well-established public policy ensuring support to children or in an analysis of the child's best interest in a particular situation, these holdings provide appropriate guidance in weighing all the relevant factors, including the impact of the loss of future support.

Id. at *4-*6.

In citing the above authority we, in no way, mean to imply that the Vissers voluntarily surrendered their parental rights to C.V. in order to avoid their support obligation. As noted above, we appreciate the difficult situation that is the basis of this case. Nonetheless, the policy considerations discussed in the ***C.J.H. v. A.K.G.*** are equally applicable to the case at bar. These considerations, in light of the statutory language and the 2000 amendment, lead us to conclude that the Legislature did not intend for a voluntary surrender of parental rights to terminate the parent's obligation to support the child until such time as the child is adopted.

Having found that the trial court erred in terminating the Vissers' obligation to support C.V., we also conclude that the trial court erred in refunding the support paid by Mr. Visser after November 4, 2005. Pursuant to the statutory authority outlined above, the Vissers are obligated to pay child support for C.V. so long as the child remains in the custody of the State.

For the foregoing reasons, we reverse the order of the trial court terminating the Vissers' support obligations for C.V. and ordering the State to refund Mr. Visser's November child support payment. The case is remanded to the trial court for such further proceedings as may be necessary consistent with this Opinion. Costs of this appeal are assessed one-half to Appellee Mark Visser and one-half to Appellee Loretta Visser.

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W. FRANK CRAWFORD, PRESIDING JUDGE, W.S.